

## Office of the Secretary of Defense

## § 275.8

(2) Provide policy guidance to DoD Components to implement this part.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

### § 275.6 Definitions.

(a) *Financial institution.* Any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings and loan, building and loan, homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any State or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) *Financial record.* An original, its copy, or information known to have been extracted from the original record held by a financial institution that pertains to a customer's relationship with the financial institution.

(c) *Person.* An individual or a partnership of five or less individuals.

(d) *Customer.* Any person or authorized representative of that person who used or is using any service of a financial institution or for whom a financial institution is acting or has acted as fiduciary for an account maintained in the name of that person.

(e) *Law enforcement office.* Any element of a DoD Component authorized by the Component head to conduct law enforcement inquiries.

(f) *Law enforcement inquiry.* A lawful investigation or official proceeding that inquires into a violation of or failure to comply with a criminal or civil statute, or any rule, regulation, or order issued pursuant thereto.

(g) *Personnel security investigation.* An investigation required to determine a person's eligibility for access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigations include investigations of subversive affiliations, suitability information, or hostage situations conducted for the purpose of making personnel security determinations; and also include investigations of allegations that arise subsequent to adjudicative action that require resolution to determine an individual's current eligibility for access

to classified information, or assignment or retention in a sensitive position.

(h) *Personnel security element.* Any element of a DoD Component authorized by the Secretary of Defense to conduct personnel security investigations.

### § 275.7 Requesting basic identifying account information.

(a) A DoD law enforcement office may issue a formal written request for basic identifying account information to a financial institution relevant to a legitimate law enforcement inquiry. A request may be issued to a financial institution for any or all of the following identifying data:

- (1) Name.
- (2) Address.
- (3) Account Number.

(4) Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

(b) A request for disclosure of the above specified basic identifying information concerning a customer's account shall not require any customer notice (§§ 275.9, 275.11, and 275.13), challenge (§ 275.9) or transfer (§ 275.13) procedures. However, this partial exception for basic identifying data shall not alter the mandatory access requirements set forth in §§ 275.8 and 275.9 to obtain the actual financial record itself.

(c) A format for requesting basic identifying account data is set forth in enclosure 1 of this part.

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### § 275.8 Procedures for obtaining customer's consent.

(a) A DoD law enforcement office or personnel security element seeking access to a person's financial records shall, when feasible, obtain the customer's consent.

(b) Any consent obtained under § 275.8(a) shall:

- (1) Be in writing, signed, and dated.
- (2) Identify the particular financial records that are being disclosed.
- (3) State that the customer may revoke the consent at any time before disclosure.

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(4) Specify the purpose for disclosure and to which agency the records may be disclosed.

(5) Authorize the disclosure for a period not in excess of 3 months.

(6) Contain a Privacy Act advisory statement required by part 286a of this title for a personnel security investigation.

(7) Contain a “Statement of Customer Rights Under the Right to Financial Privacy Act of 1978” (enclosure 2).

(c) Any customer’s consent not containing all of the elements listed in § 275.8(b), shall be void. A customer consent form, in a format set forth in enclosure 2, shall be used for this purpose.

(d) A copy of the customer’s consent shall be made a part of the law enforcement inquiry or personnel security investigation file.

(e) A certification of compliance with 12 U.S.C. 3401 et seq., in writing (enclosure 4), along with the customer’s consent, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

(f) The annual reporting requirements of § 275.14 shall apply to any request for access under § 275.8(a).

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

### § 275.9 Other access procedures.

(a) *Access by compulsory legal process—*

(1) *Administrative summons or subpoena.*

(i) Within the Department of Defense, the Inspector General, DoD, has the authority under Pub. L. 95–452 (The Inspector General Act of 1978, as amended by Pub. L. 97–252) to issue administrative subpoenas for access to financial records. No other DoD Component official may issue summonses or subpoenas for access to these records.

(ii) The Inspector General, DoD, shall issue administrative procedures for access to financial records in accordance with established procedures.

(2) *Search warrant.* (i) A law enforcement office may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure in appropriate cases.

(ii) Unless a delay of notice has been obtained under provisions of § 275.12,

the law enforcement office shall, no later than 90 days after serving the search warrant, mail to the customer’s last known address a copy of the search warrant together with the following notice:

Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [agency or department] on [date] for the following purpose: [state purpose]. you may have rights under the Right to Financial Privacy Act of 1978.

(iii) In any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands, search warrants signed by installation commanders or military judges shall not be used to gain access to financial records.

(3) *Judicial subpoena.* Judicial subpoenas are those issued in connection with a pending judicial proceeding and include subpoenas issued under paragraph 115 of the Manual for Courts-Martial (1969 Revised) and Article 46 of the Uniform Code of Military Justice. Cognizant legal counsel shall be consulted on the availability and use of judicial subpoenas.

(b) *Formal written request.* (1) A law enforcement office may issue a formal written request for financial records when the records sought are relevant to a legitimate law enforcement inquiry. This request may be issued only if the customer has declined to consent, § 275.8, to the disclosure of his or her records, or if it is determined that to seek consent from the customer would compromise or harmfully delay a legitimate law enforcement inquiry.

(2) A formal written request shall be in a format set forth in enclosure 3 and shall:

(i) State that the request is issued under the Right to Financial Privacy Act of 1978 and the Component’s implementation of this part.

(ii) Describe the specific records to be examined.

(iii) State that access is sought in connection with a legitimate law enforcement inquiry.

(iv) Describe the nature of the inquiry.

(v) Be signed by the head of the law enforcement office or a designee.